

***United States Court of Appeals
for the Second Circuit***



**RESPONDENT'S
BRIEF**

76-4267

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 76-4267

GENERAL DYNAMICS CORPORATION

Petitioner

v.

JUDITH ANN WEBER

and

DIRECTOR, OFFICE OF WORKERS' COMPENSATION
PROGRAMS, UNITED STATES DEPARTMENT OF LABOR

Respondents

ON PETITION FOR REVIEW OF AN ORDER
OF THE BENEFITS REVIEW BOARD,
UNITED STATES DEPARTMENT OF LABOR

BRIEF FOR RESPONDENT DIRECTOR,
OFFICE OF WORKERS' COMPENSATION PROGRAMS,
UNITED STATES DEPARTMENT OF LABOR

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QUESTION PRESENTED

Whether the Benefits Review Board properly affirmed the administrative law judge's factual finding, that decedent's myocardial infarction was precipitated - at least in part - by stress associated with his employment, is supported by substantial evidence.

STATEMENT OF THE CASE

Decedent, Raymond Weber, was employed by petitioner, General Dynamics Corporation, as a rigger at petitioner's Electric Boat

Division. On September 8, 1974, decedent departed on an ill-fated six week trip from his home in North Stoneington, Connecticut, to Dunoon, Scotland, to work on submarines being repaired by petitioner at nearby Holy Loch, Scotland. After working his normal shift from 4:00 p.m. to 2:30 a.m. on September 14-15, 1974, decedent returned to his room where he slept until approximately 9:30 a.m. After eating breakfast and engaging in other activities on his day off, decedent told a friend that he didn't feel well; he requested the friend to notify a doctor, then retired to his room. He died within an hour. The cause of death was determined to have been a myocardial infarction, or heart attack.

Decedent's widow timely filed a claim for death benefits on behalf of herself and two daughters, pursuant to the provisions of the Longshoremen's and Harbor Workers' Compensation Act, 44 Stat. 1424, as amended, 33 U.S.C. 901 et seq. (Supp. V, 1975). General Dynamics resisted the claim on the ground that decedent's heart attack was not precipitated by any conditions related to his employment. Following a hearing, 33 U.S.C. 919(c), (d) (Supp. V, 1975), at which all parties were given the opportunity to introduce evidence, cross examine witness, and present argument, an administrative law judge found that the stress associated with the relocation of decedent to Scotland, and the general conditions associated with his work there, resulted in the heart attack which caused decedent's death. Accordingly, the administrative law judge awarded benefits to claimant and her daughters

(App. 1a-10a). Petitioner appealed the award to the Benefits Review Board, 33 U.S.C. 921(b) (Supp. V, 1975), which affirmed the administrative law judge's award (App. 11a-15a). This appeal followed, 33 U.S.C. 921(c) (Supp. V, 1975).

ARGUMENT

THE BENEFITS REVIEW BOARD PROPERLY AFFIRMED
THE ADMINISTRATIVE LAW JUDGE'S FINDING THAT
DECEDENT'S MYOCARDIAL INFARCTION WAS PRE-
CIPITATED - AT LEAST IN PART - BY STRESS
ASSOCIATED WITH HIS EMPLOYMENT.

The scope of review of the findings of the administrative law judge is governed by well established principles. The Benefits Review Board must accept findings of fact of the administrative law judge if they are "supported by substantial evidence in the record considered as a whole." Act, § 21(b)(3), 33 U.S.C. 921(b)(3) (Supp. V, 1975); Banks v. Chicago Grain Trimmers Association, 390 U.S. 459, 467 (1968). This same standard also applies to this Court. Potenza v. United Terminals, Inc., 524 F.2d 1137 (2d Cir. 1975). Accord, Offshore Food Services, Inc. v. Benefits Review Board, 524 F.2d 967 (5th Cir. 1975); Stockman v. John T. Clark & Son, 539 F.2d 264 (1st Cir. 1976), petition for cert. filed, 45 U.S.L.Wk. 3332 (U.S. Oct. 22, 1976) (No. 76-571); Nardella v. Campbell Machine, Inc., 525 F.2d 46 (9th Cir. 1975). Substantial evidence has been defined by this Court as "the kind of evidence a reasonable mind might accept * * * to support a conclusion." McGrath v. Hughes, 264 F.2d 314, 316, cert. den'd, 360 U.S. 931 (1959).

Further, it has been held that in applying the substantial evidence test the reviewing tribunal must recognize that the "standard of persuasion is less before the [administrative law judge] than it would be in a jury trial" and that "[t]he policy of the Act that all doubtful questions are to be resolved in favor of the [claimant] is to be considered in determining whether there was substantial evidence before the [administrative law judge]." Young & Co. v. Shea, 404 F.2d 1059, 1061 (5th Cir. 1968), cert. den'd, 395 U.S. 920 (1969). Accord, Strachan Shipping Co. v. Shea, 406 F.2d 521 (5th Cir.), cert. den'd 395 U.S. 921 (1969); Friend v. Britton, 220 F.2d 820 (D.C. Cir.), cert. den'd sub nom. Harry Alexander Inc. v. Friend, 350 U.S. 836 (1955); see Pittston Stevedoring Corp. v. Dellaventura, 544 F.2d 35 (2d Cir.), petitions for cert. granted sub nom. Northeast Marine Terminal Co. v. Caputo (No. 76-444) and International Terminal Operating Co. v. Blundo (No. 76-454), ___ U.S. ___, 97 S.Ct. 522 (1976); cf., Act, § 20(a), 33 U.S.C. 920(a).

The administrative law judge concluded that "devastating stress" resulting from decedent's "working environment precipitated his death" (App. 9a). In reaching this conclusion, the administrative law judge considered evidence on the record which indicated that decedent had never before been separated from his family; that he had never before traveled outside the

United States; that he had never flown before; that he was reluctant to leave but thought it was too late to back out; that the trip to board the plane before leaving was strenuous; that decedent had trouble cashing his per diem check upon arrival in Scotland; that he was unable to make a good connection on the telephone when he called his family upon his arrival; that he was very upset upon his arrival; that the weather conditions in Scotland were very different from the ones he had left in Connecticut; that the weather in Scotland was cool and rainy much of the time; that he was under much pressure in his job, which required him to work ten and one-half hour shifts, six days a week; that a good deal of his work was performed outside in adverse weather conditions; and that the trip between Dunoon and Holy Loch was time-consuming and arduous, and resulted in decedent spending at least twelve hours per day at, and in transit to and from, work. Although there was no medical evidence that decedent's heart attack was in fact caused by strain connected with his job, there was medical evidence that stress can precipitate a heart attack; furthermore, decedent's family had a history of coronary problems, and decedent himself had at least on one previous occasion been troubled by high blood pressure.

Petitioner argues that because there was no direct medical evidence that employment stress did cause decedent's

fatal heart attack, the administrative law judge's finding to that effect is erroneous. We submit, however, that the administrative law judge's finding need not rely on direct medical evidence on causation. Rather, the administrative law judge may draw inferences based on all of the evidence in the whole record; indeed, a finding of causal relationship between employment and a fatal heart attack is sustainable "even where the only direct evidence on the issue was a statement of medical opinion that no causal relationship existed." Independent Stevedoring Co. v. O'Leary, 357 F.2d 812, 814 (9th Cir. 1966), citing Crescent Wharf & Warehouse Co. v. Cyr, 200 F.2d 633, 637 (9th Cir. 1952) (emphasis supplied). Cf. Wheatley v. Adler, 407 F.2d 307 (D.C. Cir. 1968).

In the instant case it cannot be said that there was no evidence that decedent was experiencing a great deal of stress associated with his employment; to the contrary, as noted heretofore, a great many stressful situations occurred during the week immediately preceding decedent's heart attack. When viewed in light of decedent's history of high blood pressure and his family's history of coronary disease, the administrative law judge's inference appears most reasonable and supportable

No reviewing court can set aside [an] inference because [an] opposite one is thought to be more reasonable; nor can [an] opposite inference be substituted by the court because of a belief

that the one chosen by the [administrative law judge] is factually questionable. * * * It is likewise immaterial that the facts permit the drawing of diverse inferences. The [administrative law judge] alone is charged with the duty of initially selecting the inference which seems most reasonable and his choice, if otherwise sustainable, may not be reviewed by a reviewing court.

Cardillo v. Liberty Mutual Insurance Co., 330 U.S. 469, 477-478 (1946) (emphasis supplied).

We submit that the inference drawn by the administrative law judge is supported by substantial evidence in the record considered as a whole; therefore this Court should not disturb the administrative law judge's finding nor the legal consequences flowing therefrom.

CONCLUSION

In view of the foregoing, the decision appealed from should be affirmed.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Brief was served on Matthew Shafner, Esq., O'Brien, Shafner, Garvey, Bartinik & Stuart, Box 929, Groton, Connecticut 06340, attorney for respondent Weber, Edward J. Murphy, Esq., Murphy & Beane, 160 State Street, Boston, Massachusetts 02109, and on William M. Kimball, Esq., Burlingham, Underwood & Lord, 1 Battery Park Plaza, New York, New York 10004, attorneys for the petitioner, by mailing copies thereof by certified mail, postage prepaid, on March 10, 1977.

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